

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAYTON NEWSPAPERS, INC., :
et al., :

Plaintiffs, : Case No. 3:00cv235
vs. : JUDGE WALTER HERBERT RICE
DEPARTMENT OF VETERANS :
AFFAIRS, :

Defendants. :

DECISION AND ENTRY SUSTAINING PLAINTIFFS' MOTION FOR
RECONSIDERATION (DOC. #38); FURTHER PROCEDURES PERMITTED

In its Expanded Opinion (Doc. #19), filed on January 23, 2003, this Court concluded, inter alia, that the Defendant was entitled to summary judgement on certain aspects of Plaintiffs' claims, which arise under the Freedom of Information Act, 5 U.S.C. § 552. This case is now before the Court on the Plaintiffs' Motion for Reconsideration (Doc. #38), wherein they argue that the Court based that conclusion on evidence that was incorrect. In support of and in opposition to that motion, the parties have filed hundreds of pages of evidence, most of which did not even come into existence until long after the Court had filed that Opinion. See Docs. ##38, 41-47 and 49. In other words, the Court is being requested to reassess the propriety of its grant of summary judgment in favor of Defendant, in the light of an essentially new evidentiary record. Under such circumstances, this

Court will unquestionably reconsider the challenged conclusion set forth in its Expanded Opinion. Accordingly, the Court sustains Plaintiffs' Motion for Reconsideration (Doc. #38). Of course, merely because the Court will reconsider that conclusion does not mean that it will reach a different conclusion.

The Plaintiffs have attached additional affidavits from Elliot Jaspin and John Stinneford to their Reply Memorandum (Doc. #49). The Court will afford the Defendant the opportunity of submitting, within 30 days from date, additional evidence in response to those affidavits. However, given the amount of evidence currently before the Court, it is not encouraging such a submission. If the Defendant takes advantage of this offered, but not encouraged, opportunity, the Plaintiffs shall have 20 days thereafter to file a reply memorandum, albeit without support of additional evidence.

Finally, in accordance with the directive set forth in the Court's Expanded Opinion (Doc. #19), the Defendant has filed a Vaughn Index. See Doc. #23. The Plaintiffs, however, have not taken advantage of the opportunity afforded therein to file a memorandum in response to Defendant's filing. Accordingly, the Court assumes that issues pertaining to the documents identified in that Index can be decided without benefit of briefing from the Plaintiffs. If that assumption is incorrect, Plaintiffs shall have 30 days in which to file a memorandum, and Defendant shall have 20 days thereafter to file a reply.

September 29, 2005

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.